In the High Court of Judicature at Madras

Dated:22.03.2005

Coram:
The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S.K. KRISHNAN
..
Original Side Appeal No.321 of 2000

Ramani U. Krishnan .. Appellant

vs.

Dr. Ammini Praveen Joshua
@ Veena. .. Respondent

Original Side Appeal filed under Order XXXVI rule 11 of OS Rules read with Clause 15 of Letters Patent against the order of this Court dated 19.11.1999 made in Application No.3066 of 1999 in OP.No.623 of 1997.

For appellant : Mr. R. Thiagarajan

For respondent : Mr. K.V. Venkatapathi,
Senior Counsel
For Mr. K.V. Sundararajan

JUDGEMENT

(Judgment of the Court was delivered by P. SATHASIVAM,J.,)

The above original side appeal has been filed against the order of the learned single Judge dated 19.11.1999 made in Application No.3066 of 1999 in O.P.No.623 of 1997, in and by which, the learned Judge dismissed the said application filed for revocation of the probate granted in favour of the respondent herein in O.P.No.623 of 1997 dated 02.09.1997.

2. For convenience, we shall refer the parties as arrayed before the learned single Judge.

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3. The brief facts which are required for the disposal of the appeal are stated hereunder:

The applicant, who is a third party to the proceedings in O.P.No.623 of 1997 has filed Application No.3066 of 1999 under Order XIV Rule 8 of Original Side Rules read with Section 263 of the Indian Succession Act,1925 and Order XXV Rule 62 of the Original Side Rules. The respondent herein filed the said O.P.No.623 of 1997, for probate of the Will said to have been executed by late Dr.O.Francis on 26.06.1997. The testator of the Will died on 01.07.1997. During the lifetime of Dr.O. Francis, he entered into an agreement of sale dated 30.05.1992 in respect of the property situate at No.9, Hunters Lane, Vepery, Madras 7, agreeing to convey the property in favour of the applicant for a consideration of Rs.12,25,000/- free from all encumbrances. Pursuant to the agreement, the applicant had made a payment of Rs.5 lakhs on 30.05.1992 and subsequently, a further payment of Rs.3 lakhs on 22.04.1994 and a sum of Rs.3 lakhs on 15.06.1996, leaving a balance of Rs.1,25,000/- payable at the time of execution and registration of the sale deed in her favour. It is her claim that the said Dr.O.Francis, died without fulfilling the obligations arising out of the agreement dated 30.05.1992, which has warranted the applicant to file C.S.No.1017 of 1998 on the file of this Court to enforce the contract as against the estate and the administrator. She also obtained an order of injunction against one Joseph Kumar, inter-meddler from alienating or dealing with the suit property. Subsequently, on coming to know that the respondent is projecting the Will and calling herself as a executrix of the estate of Dr. O. Francis pursuant to the orders passed in O.P.No.623 of 1997, she has filed an Application Nos.1799 and 1800 of 1999 in C.S.No.1017 of 1998 for impleadment and those applications are pending.

4. The alleged Will purported to have been executed by Late Dr. O. Francis is nothing but a document fabricated by the respondent. He never lived at No.32, Temple Road, Secretariat Colony, Kilpauk, Madras 10 and never executed the alleged Will dated 26.06.1997. The alleged Will does not refer to the agreement of sale executed by him in favour of the applicant, however, there is a valid concluded contract of sale of the property in her favour and if really Dr.O.Francis had executed the Will as projected by the respondent in sound disposing state of mind, he would have adverted to the execution of the agreement of sale in her favour and also with regard to payments, which he had received from her from time to time.

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5. The alleged propounder of the Will, namely, Dr. Ammini Praveen Joshua @ Veena, who is the respondent in the application, is an utter stranger and she is not related to Dr. O. Francis. The judgment obtained by the respondent would operate as a judgment in rem and the Court ought to have been satisfied that the Will has been duly executed, attested and proved in accordance with law and dispelled the doubts, which may arise in the mind of the Court prior to the grant of probate in favour of the respondent. The applicant has a direct substantial interest in the estate of Late Dr. O. Francis and as such, she has a caveatable interest, which cannot be ignored by the respondent while obtaining the Grant. She learnt that his own brother's son Francis Valamperampil S/o. Late Verghese, Market Ward, Alleppy, Kerala has not been cited as a party. But for the Will, his brother would be the normal heir who shall be entitled to represent Dr. O. Francis. Inasmuch as the Grand has been obtained by the respondent on the strength of the alleged Will, which is nothing but a bogus document, she is constrained to file the present application for revocation of probate.

6. The respondent filed a counter stating that the petitioner is a third party, having no caveatable interest in respect of the Original Petition and she has no locus standi to file an Application, because the petitioner is neither a legal heir nor would she get an interest in the property, but for the Will. It is an established principle that only a person, who gets some interest in the property if not for the Will, can file an application for revocation of probate on any of the reasons mentioned in Section 263 of the Indian Succession Act, 1925. The applicant is a total stranger to late Dr. O. Francis and at no point of time the said Dr. O. Francis entered into any contract or agreement of sale with the petitioner.

7. The learned Judge, after framing necessary points for consideration, after holding that the applicant has no locus standi to file the said application and in view of her suit for specific performance based on the agreement of sale dated 30.05.1992, there is no just cause for revoking the probate already granted, dismissed the said application. Hence, the present appeal.

8. Heard Mr. R. Thiagarajan, learned counsel for the appellant and Mr. K.V. Venkatapathy, learned senior counsel for the respondent.

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9. The only point for consideration in this appeal is, whether the application filed by the applicant – third party for revocation of the probate granted on 02.09.1997 in O.P.No.623 of 1997, is maintainable and whether the learned single Judge is right in dismissing the said application?

10. It is not in dispute that the applicant is a third party and she filed an Application No.3066 of 1999 to revoke the Grant of Prabate made in favour of the respondent herein in O.P.No.623 of 1997 dated 02.09.1997, based on the agreement of sale dated 30.05.1992, in respect of property situate at No.9, Hunters Lane, Veperty, Madras 9. It is also the claim of the applicant that the alleged Will purported to have been executed by Late Dr. O. Francis on 26.06.1997, is nothing but a fabricated document created by the respondent. On the other hand, it is the specific case of the respondent that the applicant is a total stranger to the said Dr. O. Francis and at no point of time the said Dr. O. Francis entered into an agreement of sale with the applicant. It is the further case of the respondent that the applicant being a third party, having no caveatable interest in respect of the above matter, has no locus standi to file the said application.

11. Mr. R. Thiagarajan, learned counsel appearing for the applicant by drawing our attention to Order XXV Rule 31, 51, 52 and Form 55 of the High Court Original Side Rules, 1956 as well as Section 263 of Indian Succession Act, 1925 would contend that the applicant is a person interested by virtue of agreement of sale with Dr. O. Francis and hence the respondent ought to have issued notice and impleaded the applicant in the probate proceedings. Order XXV of the Higher Court Original Side Rules relates to "Testamentary and Intestate Matters". As per Order XXV Rule 31, where administration is applied for by one or some of the next of kin only there being another or other next of kin equally entitled thereto, a person making application has to file a proof of affidavit stating that notice of such application has been given to such other next of kin. Rule 51 makes it clear that any person intending to oppose the issue of a Grant of Probate or Letters of Administration must either personally or by his advocate file a caveat in the Registrar’s Office in Form 69. When a caveat against the Grant of Probate or Letters of Administration is filed, it is incumbent on the part of the Registry to give notice in Form 70 to the petitioner by leaving the same at, or by sending the same by post, in

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prepaid cover to the address for service of the petitioner. Rule 52 makes it clear that, where a caveat is entered after an application has been made for Grant of Probate or Letters of Administration, the affidavit in support of the caveat shall be filed within eight days of the caveat being filed. Such affidavit shall state the right and interest of the caveator and the grounds of the objections to the application. Clause 7 of Form 55, which is an application for Probate of a Will shows that the petitioner has to implead all the next of kin or other persons interested as party / respondents. The same clause makes it clear that there is no need for the petitioner to implead anyone, if there is no next of kin or other person interested to be impleaded. Section 263 of the Indian Succession Act, 1925 speaks about revocation or annulment for just cause.

> "Section 263. Revocation or annulment for just cause.
>
> The grant of probate or letters of administration may be revoked or annulled for just cause.
>
> Explanation: Just cause shall be deemed to exist where-
>
> (a) the proceedings to obtain the grant were defective in substance; or
>
> (b) the grant was obtained fraudulently by making a false suggestion, or suggestion, or by concealing from the court something material to the case; or
>
> (c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or
>
> (d) the grant has become useless and inoperative through circumstances; or
>
> (e) the person to whom the grant was made has willfully and without reasonable cause omitted to exhibit an inventory or account in

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accordance with the provisions of Chapter VII of this Part or has exhibited under that Chapter an inventory or account which is untrue in a material respect."

Illustration (ii) reads as under:

(ii) The grant was made without citing parties who ought to have been cited.

12. Mr. R. Thiagarajan, by drawing our attention to the above provisions would contend that since probate was made without citing parties who ought to have been cited and the applicant is having caveatable interest by virtue of agreement of sale with Dr. O. Francis, the learned single Judge ought to have accepted her claim and revoked the probate. We are unable to accept the said contention for the following reasons.

13. There is no dispute that under the procedure to be followed in the matter of Grant of Probate or Letters of Administration, an affidavit stating the right and interest of the caveator and the grounds of objections to the application has to be filed. Section 263 of the Indian Succession Act, 1925 makes it clear that the Grant of Probate or Letters of Administration can be revoked or annulled only for just cause.

14. In the light of the above provisions, now let us consider whether the applicant, who is a third party has established her caveatable interest and whether she has locus standi to file the said application. The applicant is neither a legal heir nor would she got an interest in the property, but for the Will. It is a well established principle that only when the person has got some interest in the property but for the Will, for any of the reasons mentioned in Section 263 of the Indian Succession Act, he can file an application for revocation of probate. The above provision makes it clear that the Grant of Probate or Letters of Administration may be revoked or annulled for a just cause, but the case of the applicant claiming right through an agreement of sale will not come under the purview of just cause as stated in Section 263 of the Indian Succession Act.

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15. Further, as rightly pointed out by the learned counsel for the respondent, as per Section 54 of the Transfer of Property Act,1882, any contract for sale of immovable property does not, by itself, create any interest in or charge on such property. In the case of Ram Baran Prasad vs. Ram Mohit Hazra reported in AIR 1967 SC 744, their Lordships have held that,

> "11. But there has been a change in the legal position in India since the passing of the Transfer of Property Act. Section 54 of the Act states that a contract for sale of immovable property "does not, of itself, create any interest in or charge on such property."

16. In the case of In Re: P.D. Rajan reported in AIR 1996 Madras 318, it is held that in order to convert probate proceedings into TOS, there should be some relationship between person claiming revocation of probate and property of testator.

17. In the case of D.L. Rajasekaran (died) and others vs. Ayyavu reported in 1995 (2) MLJ 334 it is held that a person, not claiming any right under testator, nor a beneficiary of Will, nor who is likely to inherit estate of deceased, whose claim is adverse to interest of testator, cannot file petition under Section 263 of the Indian Succession Act, 1925 for revocation of Probate or Letters of Administration.

18. In the case of Dular Kuter vs. Kesar Kuer and others reported in AIR 1964 Patna 518, after referring Sections 263 and 283 (1) (c) of Indian Successions Act, it is held that the person having no possible chance of succeeding to testator's estate cannot file an application for revocation or probate on the ground of absence of citation. In the light of the provisions referred to above, we are in agreement with the above referred decisions. Accordingly, we hold that the applicant does not have any interest or charge over the property and therefore she is not the appropriate person to seek for revocation of order of Probate. To make it clear that a person who seeks for revocation of Probate should have a right to claim citation or to oppose the grant. As rightly concluded by the learned Judge, the applicant does not have a claim to cite or oppose the grant of Probate. Further, a person who is not claiming any right under testator nor a

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beneficiary of a Will nor who is likely to inherit the estate of the deceased whose claim is adverse to the interest of the testator, cannot file an application under Section 263 of the Indian Succession Act, 1925 for revocation of the Probate. Here, the applicant is claiming neither the right from the testator nor is she the beneficiary under the Will, nor is she likely to inherit the estate of the deceased or her claim is adverse to the interest of the testator.

19. Though it is contended that the respondent should prove the Will in a common form after impleading the applicant, as rightly pointed out by the learned counsel for the respondent, the applicant herself very clearly knows that she is nothing to do either with the Will or its Probate. She has no caveatable interest, since her remedy is only in respect of agreement of sale, which has no connection with the Probate of Will. If at all the agreement is true and genuine, she can take action through her suit by impleading the respondent and the present owner of the property, subject to law of limitation.

20. It is also brought to our notice that the applicant has filed a suit for specific performance based on the agreement of sale. In the counter affidavit filed by the respondent it is stated that the present owners and respondent have already been impleaded in the suit. In such a circumstance, as rightly pointed out, if at all the sale agreement is a genuine one, the applicant can have a remedy redressed in that suit and she has no right to get herself impleaded in the above OP., and seek for revocation of Probate already granted, more particularly, she being a stranger to the Will. Though Mr. Thiagarajan, has relied on decisions regarding the procedure to be followed for Grant of Probate or Letters of Administration, in the light of the factual details referred to above, we are of the view that it is unnecessary to refer the same.

21. Further, as rightly observed by the learned Judge, if she is able to establish the fact that the agreement of sale is true and valid document, it would be binding on the estate of the deceased and looking at this angle, no prejudice will be caused to her. We are satisfied

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that the learned Judge has considered all the relevant materials and rightly concluded that the application filed by the third party is not maintainable and there is no just cause for revoking the Probate already granted. Consequently, the appeal fails and the same is dismissed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

kh

To

The Sub Asst.Registrar
Original Side,
High Court, Madras

+1cc to Mr.K.V.Sundararajan, Advocate Sr 13884

+1cc to Mr.R.Thiagarajan, Advocate Sr 13524

TEJ (CO)
km/28.3.

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